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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 106

THE UNITED STATES, PETITIONER

vs.

THE THAYER-WEST POINT HOTEL COMPANY

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

PETITION FOR CERTIORARI FILED MAY 15, 1946
CERTIORARI GRANTED OCTOBER 14, 1946

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 1232

THE UNITED STATES, PETITIONER

vs.

THE THAYER-WEST POINT HOTEL COMPANY

ON PETITION OF A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

INDEX

	Original	Print
Record from Court of Claims	1	1
Petition	1	1
Exhibit A—Agreement between Secretary of War and United States of America, Oct. 17, 1924	10	6
Exhibit B—Letter, Phillips M. Payson to Secretary of War, Jan. 5, 1943	23	14
Exhibit C—Letter, Secretary of War to Thayer-West Point Hotel Co., Feb. 5, 1943	26	16
Exhibit D (1)—Letter, Phillips M. Payson to Secretary of War, Feb. 26, 1943	28	17
Exhibit D (2)—Letter Phillips M. Payson to Major General Francis B. Wilby, Feb. 26, 1943	29	18
Exhibit D (3)—Waiver of notice of closing of hotel, etc	30	18
Exhibit D (4)—Same	33	20
General Traverse	37	21
Argument and submission of case	37	21
Special findings of fact	39	21
Conclusion of law	52	32
Opinion of the court by Whaley, Ch. J.	52	32
Dissenting opinion by Whitaker, J.	59	38
Judgment	61	38
Clerk's certificate [omitted in printing]	63	38
Order allowing certiorari		39

1 In the Court of Claims of the United States

45874

THE THAYER-WEST POINT HOTEL COMPANY, PLAINTIFF

v.

THE UNITED STATES OF AMERICA, DEFENDANT

Petition

Filed May 19, 1943

To the Honorable, The Court of Claims:

The above-named plaintiff respectfully represents and alleges:

I

The plaintiff is a corporation duly organized and existing under the laws of the State of Delaware, with its principal office in the City of Wilmington, State of Delaware.

II

That by Act of Congress, approved March 30, 1920 (41 Stat. 548), it was provided:

"That the Secretary of War is hereby authorized to lease land on the United States Military Reservation at West Point, for a term of not exceeding fifty years, to any corporation, company, or
2 individual, upon which to erect a hotel, and all other necessary buildings in connection therewith in accordance with plans and specifications submitted to and recommended by the Superintendent of the Military Academy, and approved by the Secretary of War. Said lease shall contain such conditions, terms, reservations, and covenants as may be agreed upon and shall also provide for just compensation to the lessees for the construction of said hotel, appurtenances, and equipments, to be paid to said lessees at the termination of said lease.

III

That on October 17, 1924, pursuant to the above-mentioned Act, the Secretary of War duly made executed and delivered an indenture of lease with and to Herbert Williams of Newburgh, New York, whereby certain land of the United States Military Reservation at West Point, New York, as therein described, was leased to said Williams, as lessee, for the term of fifty years from the date of lease, and the said lessee covenanted to erect upon said land a hotel in accordance with the plans and specifications there-

after to be submitted and to operate said hotel upon terms and conditions as therein provided; that a copy of said lease is hereto annexed, marked Exhibit "A" and made a part hereof.

IV

That on or about March 23, 1925, the said lessee, Herbert Williams, duly assigned the said lease by written assignment recorded in the Office of the County Clerk of Orange County, State of New York, to The Thayer-West Point Hotel Corporation, a corporation organized under the laws of the State of New York (herein called Hotel Corporation).

3

V

That in or about April 1925 the said Hotel Corporation commenced the construction of the hotel and finally completed and equipped the same for operation in or about September 1926, pursuant to and in accordance with the terms and conditions of said lease, and in accordance with plans and specifications approved by the Superintendent of the West Point Military Academy and by the Secretary of War; that the said Hotel Corporation upon the completion of the construction and equipment of said hotel properties as aforesaid, duly took possession of the same and thereafter owned, operated and managed the said hotel under and pursuant to the terms of the said lease.

VI

That in or about the month of March 1928, the American Trust Company as Trustee under a certain first mortgage (herein called the foreclosed mortgage), duly executed, and delivered by the said Hotel Corporation to American Trust Company and Charles H. Trismen, as Trustees, covering the said leasehold, buildings, appurtenances and equipment and all the right, title, estate and interest which the Hotel Corporation had or might thereafter acquire under the said lease, and under which $1,000,000 principal amount of First Mortgage and Leasehold Secured 6½% Sinking Fund Gold Bonds had been duly issued, commenced an action in the New York Supreme Court, Orange County, against the said Hotel Corporation to foreclose the said first mortgage by reason of the default by the Hotel Corporation in the payment of
4 interest on the mortgage, and for other defaults; that judgment of foreclosure in the said action was duly rendered, and entered in the Office of the County Clerk of Orange County on January 17, 1929, decreeing foreclosure of said mortgage and finding the principal amount with interest to be due thereunder

in the amount of $1,135,291.12; that thereafter, by judgment entered in the Office of the Clerk of Orange County, New York, on December 24, 1929, the said judgment of foreclosure was duly and unanimously affirmed on appeal by the Appelate Division of the Supreme Court, Second Department, and said judgment of foreclosure upon said appeal was modified to the extent of finding that the principal and interest due under said mortgage was $1,140,951.76; that said judgment of foreclosure affirmed and modified as aforesaid has never been reversed and duly became a final and subsisting judgment.

VII

That in the month of July 1930, pursuant to the said final judgment of foreclosure the said leasehold, hotel properties, appurtenances and equipment with all right, title, estate and interest therein, covered by the said first mortgage were duly sold at public foreclosure sale and were purchased by a Protective Committee organized and acting in behalf of certain of said first mortgage and leasehold secured 6½% bondholders owning bonds duly issued under said mortgage by the Hotel Corporation in the aggregate face amount of $879,400.00, which bonds were secured by the said first mortgage, foreclosed as aforesaid; that in November, 1930, the plaintiff herein, The Thayer-West Point Hotel Company was duly organized under the laws of the State of Delaware under the direction of said Protective Committee for the benefit of the said bondholders of the said Hotel Corporation represented by said Committee, and all of the issued capital stock and income bonds of the plaintiff (subject to a first mortgage bond of $125,000.00 issued by the plaintiff, to cover its expenses and its expenditure for equipment, under and secured by a mortgage now a lien on the hotel properties), were duly delivered to said bondholders in lieu of and in exchange for their first mortgage bonds of the Hotel Corporation and the said Committee duly assigned to the plaintiff all of its rights under said foreclosure sale; that on December 26, 1930, pursuant to said first mortgage foreclosure judgment and the sale thereunder, the said leasehold and all the right, title, estate and interest thereunder, together with all the buildings, improvements, fixtures, appurtenances and equipment of all kinds used in connection therewith, subject to said first mortgage, were caused to be duly conveyed and transferred by deed to the plaintiff herein, The Thayer-West Point Hotel Company by one Herbert B. Royce, the duly constituted Referee in the said mortgage foreclosure proceedings; that the deed given by said Royce as Referee to plaintiff herein as aforesaid was duly recorded in the Office of the Clerk of Orange County, New York, on January 3, 1931; that on or about December 20, 1930, Edward

J. Kelly, as Trustee in bankruptcy of the said Hotel Corporation, duly executed and delivered in quit-claim deed relating to said properties to the plaintiff; that on or about March 4, 1931 one Charles H. Trismen as Trustee of the foreclosed mortgage, duly executed and delivered a quit-claim deed relating to said properties to the plaintiff; that on or about March 18, 1931, one Byron C. Hawley as Substitute Trustee, duly executed and delivered
6 a quit-claim deed relating to said properties to the plaintiff; that all of the said quit-claim deeds are recorded in the Office of the Clerk of Orange County, New York; that in February 1931, L. Barth & Company duly executed and delivered a bill of sale to the plaintiff of certain furnishings and equipment contained and used in the said hotel; that in and by the provisions of said Referee's deed, and said judgment of foreclosure and sale, and said quit-claim deeds and said bill of sale, the plaintiff herein duly became vested with full and complete title to the said leasehold and the mortgaged premises and to all the said hotel properties, appurtenances, equipment, rights, title and interest therein.

VIII

That the plaintiff herein, The Thayer-West Point Hotel Company thereupon took possession as owner of said leasehold and said hotel properties, appurtenances and equipment therein and at all times with the knowledge and consent of the Secretary of War continued in possession thereof and operated and managed the same in accordance with and pursuant to the terms of the said lease down to March 10, 1943; that on January 5, 1943, the above-named plaintiff addressed a letter and caused the same to be delivered to the Secretary of War, a copy of which is hereto annexed marked Exhibit B and made a part hereof; that on February 5, 1943, the Secretary of War replied to the above letter, a copy of which reply is hereto annexed, marked Exhibit C and made a part hereof; that in accordance with the understanding and arrangement set forth in the said letters, the plaintiff herein duly delivered, on February 26, 1943, a notice of default to the Superintendent of the Military Academy at West Point and
7 the Secretary of War and also the waivers mentioned in the plaintiff's said letter, copies of which are hereto annexed as one exhibit marked Exhibit D and made a part hereof, and plaintiff did on March 10, 1943, discontinue operation of the said hotel and its properties, appurtenances and equipment and closed the said hotel at 9 o'clock A. M. Eastern War Time on said day, and immediately thereupon the Secretary of War acting by and through the Superintendent of the Military Academy at West Point, his agents and representatives, took over possession and occupation and management of the said hotel and all its properties,

appurtenances and equipment and has ever since continued in possession, management and control of the same; that on March 24, 1943, the plaintiff herein received a formal notice from the Secretary of War, declaring the lease forfeited under its terms.

IX

That in and by the terms and conditions of the said lease, it was provided that when the said lease came to an end either by the expiration of the term reserved therein or by reason of the forfeiture of said lease by the Secretary of War, just compensation shall be paid by the United States of America to the lessee or his assigns for the construction of the hotel appurtenances and equipment upon the demised premises; that on information and belief the total cost for the construction of the hotel, including appurtenances and equipment, together with all expenses properly attributable thereto, is the sum of approximately $1,932,000.00; that on or about April 21, 1943, plaintiff mailed to the Secretary of War a request that just compensation be paid for the con-
8 struction of said hotel, appurtenances and equipment; that no reply has been received thereto from the Secretary of War.

X

That no other action has been had on said claim in Congress or by any of the Departments of the Government; that no person other than the plaintiff is the owner thereof or interested therein; that no assignment or transfer of the said claim or any part thereof or interest therein has been made; the plaintiff is justly entitled to the amount herein claimed from the United States after allowing all just credits and offsets and no part thereof has been paid, although duly demanded; the plaintiff has at all times borne true faith and allegiance to the Government of the United States and has in no way aided or abetted or given encouragement to rebellion against said Government. The plaintiff is a citizen of the United States.

Wherefore, plaintiff asks judgment against the United States in the sum of One million, nine hundred and thirty-two thousand dollars, together with such further amounts to which the plaintiff may be entitled and to such other relief as to the Court may seem just and proper.

THE THAYER-WEST POINT HOTEL COMPANY,
By PHILLIPS M. PAYSON, *President.*

SEIBERT & RIGGS,
Attorneys for Plaintiff,
30 Broad Street, New York City, N. Y.

9 [*Duly sworn to by Phillips M. Payson; jurat omitted in printing.*]

10 *Exhibit A to petition*

This agreement made this 17th day of October 1924 between The Secretary of War of the United States of America, party of the first part, and Herbert Williams of Newburgh, N. Y., party of the second part, witnesseth:

That the said party of the first part pursuant to the power conferred upon him by the Military Academy Appropriation Act for the fiscal year ending June 30th, 1921, 66th Congress, H. R. 12467, approved March 30th, 1920, and in consideration of One Dollar, the receipt whereof is hereby acknowledged, has agreed to let and hereby does let to the said party of the second part, and the said party of the second part has agreed to take and hereby does take from the said party of the first part the following described parcel of land on the United States Military Reservation at West Point, viz:

All that tract of land on the United States Military Reservation at West Point, N. Y., lying between the southern boundary line of said reservation and a line six hundred (600) feet north of, and parallel to, said southern boundary line and east of the main roadway leading through said reservation.

Subject to the right of way of the West Shore Railroad Company. For and during the term of fifty years from the date of this lease.

The said party of the second part covenants that he will erect upon said premises a hotel and all other necessary buildings in connection therewith, substantially as set forth in the plans submitted by the party of the second part in connection with his bid to the Quartermaster of the Military Academy at West Point, complete plans and specifications to be hereafter submitted to, and approved in writing by, the Superintendent of the Military Academy at West Point and by the party of the first part.

11 Provided that this lease and the term hereby reserved shall be void unless the completed plans and specifications to be hereafter submitted shall be approved by the Superintendent of the Military Academy at West Point and by the Secretary of War, and unless construction of the hotel in accordance therewith is commenced within six calendar months from and after the execution and delivery to the party of the second part of this lease, and unless the construction of said hotel is completed on or before two years from the commencement of the construction thereof unless prevented by accident or unavoidable causes, and in such case as soon after such date as is practicable.

The party of the second part agrees that before work is commenced on said hotel building, he, his representatives or assigns, will cause to be executed to the party of the second part, or his assigns, and delivered to the Superintendent, U. S. M. A., by the contractor, or contractors, to whom the contract, or contracts, to build said hotel building are let, a bond in form and with one or more sureties satisfactory to the parties of the first and second parts, conditioned for the indemnity of the parties of the first and second parts against all mechanics', material men's and other liens, and the claims of all mechanics, material men, laborers, and others which may not be enforceable by lien, which may arise or be created in or about the erection of said hotel building, and that, when completed, as aforesaid, the said building and premises shall be free from all liens and claims whatsover, for the construction thereof; and further conditioned that said building shall be completed on or before two years from the commencement of construction thereof, unless prevented by accident or unavoidable causes, and in such case as soon after such date as is practicable.

Provided further that the party of the second part shall,
12 from time to time, establish standard rates for rooms and meals in said hotel, which rates shall be submitted to and shall be subject to the approval of the Superintendent of the Military Academy for the time being, and the following persons shall be entitled to a discount from said rates of twenty-five percent (25%) upon production of a card signed by the Adjutant of the Post or such other officer as may be designated by the Superintendent representing the bearer to be entitled thereto as follow :

(a) The Board of Visitors to the United States Military Academy and officers of the United States Government making tours of inspection at the Post.

(b) Parents and guardians of cadets.

(c) Officers of the United States Army on duty at the Post and their dependents when other quarters are not available.

(d) Officers and their dependents not under war department orders for such duty, but officially connected with athletic teams as coaches or trainers. There shall be no discrimination in the quality of service, meals or otherwise, against these classes as compared with other guests.

The total number of rooms in said hotel which shall be subject to such discount shall not at any one time exceed one hundred rooms.

Provided further that in times of congestion due to functions at the Post, when no other rooms are available, cots shall be pro-

vided in the rooms in said hotel for the accommodation of visitors to the Post for which an additional charge shall be made subject to the approval of the Superintendent of the Military Academy at West Point for the time being.

The party of the second part covenants and agrees that he, his representatives or assigns, will at all times keep the buildings and improvements on said demised premises and the equipment therein insured against loss or damage by fire for their full insurable value in companies satisfactory to the Superintendent, U. S. M. A., and furnish the Superintendent, U. S. M. A., with a complete list of all such insurance; that he will pay the premiums necessary for those purposes immediately as they become due; that in any mortgage which may be placed upon the buildings to be erected upon the demised premises, there shall be inserted a clause in substance that in case of fire the proceeds of any insurance shall be used by the mortgagee or trustee of said mortgage to restore the buildings to the conditions in which they were before the fire, or at the option of the mortgagee to remove the debris resulting from the fire and to clean up the premises, and such clauses shall obligate the mortgagee or trustee to so expend such moneys so far as may be necessary, provided that if the party of the second part, his representatives or assigns, shall at any time fail to insure or keep the premises insured as aforesaid, the party of the first part may void this lease upon notice to any mortgagee or trustee of any mortgage, and after affording such mortgagee or trustee of any mortgage reasonable opportunity to comply with this requirement of this instrument. 13

The party of the second part further covenants and agrees that in case of damage or destruction, from time to time, by fire or otherwise, to repair, restore, or rebuild the buildings and improvements on the demised premises, in accordance with plans and specifications to be approved by the Superintendent, U. S. M. A., with all reasonable dispatch; provided, that the parties of the first and second part may agree that the said buildings be not repaired, restored or rebuilt by said second party, as aforesaid, and as to the terms under which said repairing, restoring or rebuilding may be waived.

The party of the second part further covenants and agrees that he, his representatives or assigns, will also maintain in force at all times liability and compensation insurance covering visitors, guests, and their property, and employees of said hotel. 14

Provided further that said party of the second part shall keep the said hotel open for business every day during the continuance of this lease, except at such times as permission to close may

be given in writing by the Superintendent, U. S. M. A. The Superintendent shall have the right to close said hotel in cases of epidemic should he deem it necessary to do so.

Provided further that in case of any disagreement between the party of the second part and the Superintendent of the Military Academy at West Point regarding the rates to be charged for services in said hotel, the amount of such charges shall be determined by the Secretary of War after due presentation of the case by both parties, the decision of the Secretary of War to be final and controlling upon both parties.

Provided further that said hotel and buildings connected therewith, shall be used solely and exclusively for hotel purposes except that display rooms may be maintained either by the parties of the second part or by travelling salesmen, guests at the hotel, for the sale and display of merchandise to officers and cadets, and except also that the party of the second part may maintain or let out concessions for a barber shop, beauty parlor, news and cigar stands and the sale of such articles as are usually and commonly sold in connection with hotels in like localities.

The party of the second part further covenants for himself, his representatives and assigns, that he will not erect or permit to be erected on the demised premises any new buildings or make or permit to be made any addition to the said hotel building so to be erected or to any buildings which may at any time during the said term be erected upon the land hereby demised, except in accordance with plans and specifications previously approved by the Superintendent, U. S. M. A.

15 The party of the first part further covenants and agrees that the party of the second part shall be authorized to cut and haul surplus ice from ponds and bodies of water on the reservation to the extent of the requirements of said hotel and at such times and places as may be designated by the Superintendent of the Military Academy at West Point, and permit the party of the second part to construct storage buildings therefor at the pond or elsewhere as the Superintendent may direct.

The party of the first part further covenants and agrees that electricity will be furnished to the party of the second part for use in said hotel for both light and power at a charge not exceeding that paid by the Quarter Master Department to the United States Military Academy. The party of the second part to connect to the post system at point designated by the Superintendent of Military Academy at West Point.

The party of the first part further covenants and agrees to supply to the party of the second part for use in said hotel and buildings such water as may be necessary for the use of the party of the second part in connection therewith without charge except the

actual expense of making the water connection which shall be made at such point as shall be designated by the Superintendent of the United States Military Academy at West Point.

Providing that the provisions of this contract respecting electric current and water supply shall be subject to any action that Congress may take in the future. A breach of any or all of said provisions by the Government resulting from future legislation or want of legislation by Congress shall create no claim in favor of the lessee or right of action against the United States.

The party of the second part shall have the right and privilege of connecting said hotel and buildings with the present sewerage system of West Point under the supervision of the United
16 States Military Academy at West Point without other charge than the expense of making such connection.

After the expiration of the present exclusive bus and taxi franchise which has heretofore been given by the United States Military Academy at West Point, the party of the second part, if unable to make satisfactory arrangements with such bus and taxi service, shall have the right and privilege of operating his own bus or taxi system between the West Shore Railroad Station and boat landing at West Point and said hotel, it being understood that the rates to be charged for transporting passengers on the Post of West Point shall be satisfactory to the Superintendent.

The party of the second part covenants and agrees to observe, and cause to be observed, all rules and regulations now established or which may hereafter be established by the Superintendent of the Military Academy at West Point so far as the same apply to or affect the leased premises.

No member of or delegate to Congress shall be admitted to any share or part of this contract or agreement or to any benefit which may arise thereupon.

It is hereby agreed by and between the parties hereto that the title to the building or buildings, to be erected under the terms of this lease, and the appurtenances and equipments therein (except such furniture and furnishings as may be supplied by guests for their own use) shall at all times during the life of this lease be in the party of the second part, his representatives or assigns; but that when said lease shall come to an end, either by the expiration of the term reserved herein, or by reason of the voiding of the same by the party of the first part and the cancellation or annullment thereof by the Secretary of War herein provided, the title to said building or buildings, and the appurtenances and equipments shall pass at once to the United States, subject to the provisions herein contained for the payment by the United
17 States of America to the party of the second part of just compensation therefor and the party of the first part shall

have the right without notice or demand to enter and take possession of said building or buildings, appurtenances and equipments without resort to any court proceedings, and to expel the party of the second part, his representatives and assigns.

It is mutually understood, covenanted and agreed that at the termination of this lease by the expiration of the term reserved, just compensation shall be made to the party of the second part, or his assigns, for the construction of said hotel appurtenances and equipments which may then be upon the demised premises.

It is further agreed and understood that this lease may be annulled at any time by the Secretary of War should the party of the second part fail to observe all of the covenants and conditions of the lease or any of the rules and regulations promulgated by the Superintendent under said lease. But it is mutually understood and agreed that before the party of the first part may terminate this lease by reason of any failure or omission on the part of the party of the second part, or his assigns, due notice shall be given him as well as any mortgagee or trustee of any mortgage covering the building, appurtenances and equipment upon the demised premises, of the claim made by the party of the first part of such omission or failure, and a reasonable opportunity afforded him to comply with the requirement of the party of the first part in that regard. And if such failure or omission shall continue after the lapse of a reasonable time given by the Superintendent to correct the same and to comply with the requirement of the said Superintendent in that regard, then the Secretary of War may in addition to other remedies the United States may have in the premises declare this lease forfeited for such failure, and thereupon just compensation shall be made to the party of the second part, or his assigns, for the construction of said hotel, appurtenances and equipments.

18 It is agreed that in case of the execution on the demised premises or any part thereof, of a mortgage, deed of trust, or other instrument affecting the title thereof, one certified copy thereof shall be filed with the Superintendent of the Military Academy and one certified copy with the Judge Advocate General of the Army.

That the party of the second part will keep said premises, the hotel, appurtenances and equipments in good repair at all times and that, at the expiration of said term or upon cancellation or annulment of the lease as herein provided, he will quit and surrender said property in as good state and condition as reasonable wear and tear thereof will permit; that the Superintendent, U. S. M. A., or an officer designated by him, shall at any and all times have access to said premises to make such inspections as he may deem necessary.

Should the United States Government during the term of this lease erect or permit the erection or operation of another hotel upon the United States Government reservation at West Point, after the expiration of the present lease of the hotel now on said reservation, then at the option of the party of the second part, this lease may be terminated, and the party of the second part shall thereupon become entitled to just compensation as above provided as of the date of such termination.

The party of the second part covenants and agrees that he will not sublet or lease the hotel, or any portion thereof, nor assign this lease except by way of concessions as above provided, without the written approval of the Superintendent of the Military Academy at West Point, except that it is understood and agreed that the party of the second part may form a corporation to which this lease may be assigned without such approval.

In witness whereof, the party of the first part has caused this instrument to be executed by John W. Weeks, Secretary of
19 War, and the seal of the War Department to be hereunto affixed, and the party of the second part has hereunto set his hand and seal the day and year first above mentioned.

UNITED STATES OF AMERICA,
[SEAL] By JOHN W. WEEKS,
Secretary of War.

HERBERT WILLIAMS.

UNITED STATES OF AMERICA,
District of Columbia, ss:

On this 17th day of October 1924, before me personally came Herbert Williams, to me known and known to me to be the person described in and who executed the foregoing lease and he duly acknowledged to me that he executed the same.

(Signed) W. T. HARTLESS,
Notary Public, Dist. of Columbia.

(Seal of Notary) (Seal of Court) No. 39280.

20 DISTRICT OF COLUMBIA, *ss:*

I, Morgan H. Beach, Clerk of the Supreme Court of the District of Columbia, the same being a Court of Record, having by law a seal, do hereby certify that William T. Hartless before whom the annexed instrument in writing was executed, and whose name is subscribed thereto, was at the time of signing the same a Notary Public in and for said District, residing therein, duly commissioned and sworn, and authorized by the laws of said District to take the acknowledgment and proof of deeds or conveyances of lands, ten-

ements, or heriditaments, and other instruments in writing, to be recorded in said District, and to administer oaths; and that I am well acquainted with the handwriting of said Notary Public and verily believe that the signature to said instrument and impression of seal thereon are genuine.

In witness whereof, I have hereunto subscribed my name and affixed the seal of said Court, at the City of Washington, D. C., the 20th day of October A. D. 1924.

[SEAL OF COURT] (Signed) MORGAN H. BEACH;
Clerk.

By CHAS. B. COFLIN,
Asst. Clerk.

21 UNITED STATES OF AMERICA,
District of Columbia, ss:

On this 20th day of October 1924, before me personally came John W. Weeks, to me known and whom by me being duly sworn, did depose and say that he is the Secretary of War of the United States of America, the lessor in the foregoing lease; that he knows the seal of the War Department of the United States of America, and that the seal affixed to said instrument is such official seal of the said War Department and was affixed thereto by his order; that he signed his name as the Secretary of War of the United States of America and acknowledged to me that he executed the said lease as the act and deed of the United States of America under the authority and for the uses and purposes therein mentioned.

[NOTARY SEAL] (Signed) JNO. B. RANDOLPH,
Notary Public.

No. 39281. (Seal of Court.)
My Commission expires Oct. 22, 1925.

22 DISTRICT OF COLUMBIA, *ss:*

I, Morgan H. Beach, Clerk of the Supreme Court of the District of Columbia, the same being a Court of Record, having by law a seal, do hereby certify that Jno. B. Randolph before whom the annexed instrument in writing was executed, and whose name is subscribed thereto, was at the time of signing the name a Notary Public in and for said District, residing therein, duly commissioned and sworn, and authorized by the laws of said District to take the acknowledgment and proof of deeds or conveyances of lands, tenements, or hereditaments, and other instruments in writing, to be recorded in said district, and to administer oaths; and that I am well acquainted with the handwriting of said Notary Public and

verily believe that the signature to said instrument and impression of seal thereon are genuine.

In witness whereof, I have hereunto subscribed my name and affixed the seal of said Court, at the City of Washington, D. C., the 20th day of October A. D. 1924.

[SEAL OF COURT] (Signed) MORGAN H. BEACH,
Clerk.

By CHAS. B. COFLIN,
Assistant Clerk.

23 *Exhibit B to petition*

93 EXCHANGE STREET,
Portland, Maine, January 5, 1943.

Attention of Corps of Engineers

Hon. HENRY L. STIMSON,
Secretary of War, Washington, D. C.

DEAR SIR:

Under the Act approved March 30, 1920 (41 Stat. 548), the Secretary of War, on October 17, 1924, leased a parcel of land on the United States Military Reservation at West Point for a period of fifty years for the purpose of constructing thereon a hotel and all other necessary buildings in accordance with plans to be approved by the Superintendent of the Military Academy. The assigns of the lessee constructed a hotel and necessary buildings known as the Thayer-West Point Hotel, which is owned and operated by the Thayer-West Point Hotel Company.

Due to existing conditions which are beyond the control of the stockholders and directors of The Thayer-West Point Hotel Company, and the military authorities at West Point, and which were not contemplated at the time the said lease was executed, it is now impossible to operate the Hotel as previously conducted. Such conditions will necessarily force a curtailment in operation unsatisfactory to the military authorities at West Point, and perhaps the closing of the Hotel in accordance with the terms of the lease. If the Hotel should fall into the hands of outside interests through the foreclosure of the first mortgage thereon, the bondholders would be deprived of any return on their original investment and the operation of the Hotel would be con-
24 ducted to the detriment of the Officers, the Cadets and their friends. Under the circumstances the Hotel Company considers it desirable that in order to avoid a curtailment of the operation or a possible closing down of the hotel, or the operation of the hotel to the detriment of the Officers, the Cadets

and others, the properties should be owned and operated by the Government.

The lease provides that it may be cancelled at any time by the Secretary of War should the second party thereto fail to observe all the covenants and conditions of the lease or any of the rules and regulations promulgated by the Superintendent under the said lease, and that the Secretary of War may declare the lease forfeited for such failure and thereupon just compensation shall be made to the second party to said lease or his assigns for the construction of the said Hotel, appurtenances and equipment.

Inasmuch as our holdings and the value thereof depend upon a contract, authorized by and embodied in the lease, it is suggested that the method of cancellation provided for in the lease, if adopted, will protect all parties, and we therefore suggest the following procedure, under the lease, which will result in the acquisition by the Government of the properties in question.

In order that the officers and directors of The Thayer-West Point Hotel Company may fully protect the rights of its stockholders and its bondholders, we are writing to you to inquire if you will write us a letter, stating that in the event default is made by the Company under the provisions of the lease, you will forthwith thereafter declare the lease forfeited and take title to the building erected on the leased property and the appurtenances and equipments therein (except such furniture and furnishings as are supplied by guests for their own use) in accordance with the provisions of the lease to the end that the Company shall be entitled to the just compensation, as provided in the lease. The letter should also indicate that the forfeiture will not result in any action by the Government other than to effect the conveyance of the Hotel property to the Government and to make just compensation therefor, as provided in the lease.

This action is to be based upon our delivery to the Superintendent at West Point of notice of the default in advance of the time when it will occur, and also upon our delivery to the Superintendent of a waiver by this Company and by the present holder of the mortgage on the Hotel of notice of any claim made by you of omission or failure growing out of such default, and a waiver of reasonable opportunity of compliance by the mortgagee to correct such omission or failure of the terms of the lease, and of a further waiver of any time to be given by the Superintendent of the West Point Academy to correct the omissions or failure caused by such default and to comply with any requirements of the Superintendent in that regard.

This communication is not intended and should not be construed as a notice of default on our part. However, it is urgently

requested that, with a view to relieving the acute situation which exists with respect to the maintenance and operation of the hotel, consideration be given to the possibility of Government ownership as contemplated by the terms and provisions of the lease.

Your early advice in this matter will be appreciated.

Yours truly,

THE THAYER-WEST POINT HOTEL COMPANY,
By Phillips M. Payson
PHILLIPS M. PAYSON, *President.*

26 *Exhibit C. to petition*

WAR DEPARTMENT,
Washington, Feb. 5, 1943.

THE THAYER-WEST POINT HOTEL COMPANY,
West Point, New York

GENTLEMEN: Receipt is acknowledged of your letter dated January 5, 1943, presenting the situation with respect to the maintenance and operation of the Thayer-West Point Hotel and appurtenances now owned by your Company and located on lands leased from the United States within the United States Military Reservation at West Point.

The lease entered into between your predecessors and the United States pursuant to an Act of Congress approved March 30, 1920 (41 Stat. 548), provides in substance that certain premises owned by the United States are leased for a period of fifty years commencing October 17, 1924, for the purpose of erecting thereon a hotel and other buildings necessary for its operation. The buildings thereon are the property of your Company and upon termination of the lease the buildings become the property of the United States, for which the United States is required to pay just compensation. The lease makes provision for annulment should the lessee fail to observe the covenants and conditions of the lease or the rules and regulations promulgated by the Superintendent of the Military Academy. Before termination of the lease by annulment, the lease provides that due notice must be given to the lessee, mortgagee and trustee of any mortgage, and a reasonable opportunity afforded to comply with the requirements of the United States.

27 Your letter indicates the necessity for a curtailment of the operation of the hotel by your Company or a possible closing of the hotel. In case of the closing of the hotel, it would be incumbent upon the Government to notify the lessee and other in-

terested parties that such action constitutes a failure to observe the covenants and conditions of the lease and would be a sufficient cause for annulment of the lease. Such notice would of necessity give reasonable opportunity to the parties to comply with the terms and conditions of the lease before an annulment would be effective. If, however, the Hotel Company should notify the War Department that it intended to close the hotel on a given date, and accompanied such notice with waivers from the Company, the mortgagee, trustee of any mortgage and other interested parties, relieving the lessor of the obligation of giving notice and granting a reasonable time for compliance with the terms and conditions of the lease, then it would be the duty of the War Department to take possession of the property upon the date specified.

The statute (41 Stat. 548) provides that upon termination of the lease just compensation must be paid to the owners of the property and it will be necessary for the Government to comply with the statute.

Please be informed, therefore, that if you proceed as you have tentatively outlined in your letter, and forward a notice of default accompanied by proper waivers from all interested parties, it is the intention of the War Department to take the necessary action to declare the lease forfeited under its terms, to take possession of the building and appurtenances, and to institute condemnation proceedings for the purpose of clearing the title to the buildings, appurtenances and equipment, and of determining the just compensation to be paid to the owners in accordance with the statute.

Sincerely yours,

HENRY L. STIMSON,
Secretary of War.

28 *Exhibit D (1) to petition*

FEBRUARY 26, 1943.

HON. HENRY L. STIMSON,
Secretary of War, Washington, D. C.

DEAR SIR: Please take notice that the undersigned intends to close The Thayer-West Point Hotel, located on the Military Reservation at West Point, New York, on March 10, 1943, at 9 o'clock, A. M., E. W. T. Reference is made to letters from the undersigned to the Secretary of War dated January 5, 1943, and from the Secretary of War to the undersigned dated February 5, 1943.

THE THAYER-WEST POINT HOTEL COMPANY,
By Phillips M. Payson,
PHILLIPS M. PAYSON, *President.*

29 *Exhibit D (2) to petition*

FEBRUARY 26, 1943.

MAJOR GENERAL FRANCIS B. WILBY,
Superintendent, United States Military Academy,
West Point, New York.

DEAR SIR: Please take notice that the undersigned intends to close The Thayer-West Point Hotel, located on the Military Reservation at West Point, New York, on March 10, 1943, at 9 o'clock, A. M., E. W. T. Reference is made to letters from the undersigned to the Secretary of War, dated January 5, 1943, and from the Secretary of War to the undersigned dated February 5, 1943.

THE THAYER-WEST POINT HOTEL COMPANY,
By: Phillips M. Payson,
PHILLIPS M. PAYSON, *President*

30 *Exhibit D (3) to petition*

Whereas The Thayer-West Point Hotel Company is now the owner of a lease dated October 17, 1924 made between the Secretary of War of the United States of America and Herbert Williams, covering certain premises on the United States Military Reservation at West Point, New York, upon which is erected the Hotel owned by the Thayer West Point Hotel Company known as The Thayer West Point Hotel, and

Whereas, said lease provides in part that before the Secretary of War may terminate the lease by reason of any failure or omission on the part of the said Herbert Williams or his assigns, due notice shall be given him as well as any mortgagee of any mortgage covering the buildings, appurtenances and equipments upon the demised premises of such failure or omission and a reasonable opportunity afforded him to comply with the requirements of the Secretary of War in that regard, and

Whereas, The Thayer West Point Hotel Company has received from Henry L. Stimson, Secretary of War of the United States, a letter dated February 5, 1943, stating the intention of the War Department in the event of the closing of the Hotel by The Thayer West Point Hotel Company, among other things, to take possession of said Hotel, and

Whereas, The Thayer West Point Hotel Company, relying upon said letter from the Secretary of War, intends to close the Hotel on March 10, 1943, at 9 o'clock A. M., Eastern War Time, and to notify the War Department and the Superintendent of the United States Military Academy at West Point of such intention, and

Whereas, said letter from the Secretary of War states that
31 if said notice shall be accompanied by proper waivers from all interested parties, relieving the lessor of the obligation

of giving notice and granting a reasonable time for compliance with the terms and conditions of the lease above set forth, then it would be the intention, among other things, of the War Department to take possession upon the date specified of the property covered by the lease, and

Whereas, the undersigned are the owners of a mortgage dated the 27th day of December 1930, made by The Thayer West Point Hotel Company to Phillips M. Payson, Harold C. Payson and T. M. Huston copartners engaged in business under the firm name of "H. M. Payson & Co.," all residing in the City of Portland, in the State of Maine, and covering the lease above mentioned and the buildings erected on the leased premises with the appurtenances thereto and equipment thereof on the United States Military Reservation at West Point, New York, owned by The Thayer West Point Hotel Company, said mortgage having been recorded in the County Clerk's Office in the County of Orange, State of New York, in Liber 641 of Mortgages, Page 8, which mortgage and the Bond secured by the same have been duly assigned to the undersigned and on which there is now due and unpaid the principal amount of $115,000 with interest thereon at the rate of 6% per annum from January 1, 1942.

Now, therefore, in consideration of the premises, the undersigned hereby waive notice of the closing of The Thayer West Point Hotel on March 10th, 1943 at 9 o'clock A. M., Eastern War Time, and of any claim made by the lessor in respect of such closing, and also waives reasonable opportunity to correct any failure or omission of the terms of said lease and to comply with the requirements of the Superintendent of the United States Military Academy at West Point in that regard, and hereby relieves
32 the Secretary of War of the United States of America from any obligation of giving such notice and of granting a reasonable time for the compliance with the terms and conditions of said lease.

Phillips M. Payson. [L. S.]
PHILLIPS M. PAYSON.
Harold C. Payson. [L. S.]
HAROLD C. PAYSON.

STATE OF MAINE.
County of Cumberland, ss:

On the 26th day of February 1943, before me came Phillips M. Payson and Harold C. Payson, to me known and known to me to be the individuals described in and who executed the foregoing instrument and acknowledged that they executed the same.

[SEAL] PORTER W. MOULTON,
Notary Public.

33 *Exhibit 9 (4) to petition*

Whereas, the undersigned is now the owner of a lease dated October 17, 1924, made between the Secretary of War of the United States of America and Herbert Williams, covering certain premises on the United States Military Reservation at West Point, New York, upon which is erected the Hotel owned by the undersigned known as The Thayer West Point Hotel, and

Whereas, said lease provides in part that before the Secretary of War may terminate the lease by reason of any failure or omission on the part of the said Herbert Williams or his assigns, due notice shall be given him of the claim made by the Secretary of War of such failure or omission and a reasonable opportunity afforded him to comply with the requirements of the Secretary of War in that regard, and

Whereas, the undersigned has received from Henry L. Stimson, Secretary of War of the United States a letter dated February 5th, 1943, stating the intention of the War Department in the event of the closing of the Hotel by the undersigned, among other things, to take possession of said Hotel, and

Whereas, the undersigned, relying upon said letter from the Secretary of War intends to close the Hotel on March 10th, 1943, at 9 o'clock A. M. Eastern War Time and to notify the War Department and the Superintendent of the United States Military Academy at West Point of such intention, and

Whereas, said letter from the Secretary of War states that if said notice shall be accompanied by proper waivers, from all interested parties relieving the lessor of the obligation of giving notice and granting a reasonable time for compliance with the terms and conditions of the lease above set forth, then it

34 would be the intention among other things of the War Department to take possession upon the date specified of the property covered by the lease.

Now, therefore, in consideration of the premises, the undersigned hereby waives notice of the closing of The Thayer West Point Hotel on March 10th, 1943, at 9 o'clock A. M. Eastern War Time and of any claim made by the lessor in respect of such closing, and also waives reasonable opportunity to correct any failure or omission of the terms of said lease and to comply with the requirements of the Superintendent of the United States Military Academy at West Point in that regard, and hereby relieves the Secretary of War of the United States of America from any obligation of giving such notice and of granting a reasonable time for the compliance with the terms and conditions of said lease.

[SEAL] THE THAYER WEST POINT HOTEL COMPANY,
By PHILLIPS M. PAYSON *President*.

Attest:

JOHN S. SHEDDEN, *Secretary*.

35 STATE OF MAINE,
County of Cumberland, ss:

On the 26th day of February 1943, before me came Phillips M. Payson to me known, who being by me duly sworn did depose and say: that he resides at Portland, Maine, that he is the President of The Thayer West Point Hotel Company, a corporation described in and which executed the foregoing instrument, that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

[SEAL] PORTER W. MOULTON,
Notary Public.

37 *General Traverse*

Filed June 28, 1943

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

FRANCIS M. SHEA,
Assistant Attorney General.

DBM.
EEE.

Argument and submission of case

On December 4, 1945, the case was argued and submitted on merits by Mr. Ernest J. Ellenwood for the plaintiff; and Mr. D. B. MacGuineas for defendant.

39 *Special findings of fact, conclusion of law and opinion of the court by Whaley, Ch. J. Dissenting opinion by Whitaker, J.*

(Filed March 4, 1946)

Mr. Ernest J. Ellenwood for the plaintiff. Mr. John S. Shedden and Ellenwood & Shedden were on the briefs.

Mr. Donald B. MacGuineas, with whom was Mr. Assistant Attorney General John F. Sonnett, for the defendant.

This case having been heard by the Court of Claims, the court, upon the evidence and the report of a commissioner, makes the following:

Special findings of fact

1. Plaintiff is and since November 7, 1930, has been a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in Wilmington, Delaware. The Thayer-West Point Hotel Corporation, hereinafter referred to as the "original corporation," was a corporation organized March 20, 1925, under the laws of the State of New York and existing at all times pertinent to this action. As a result of foreclosure sale and reorganization, plaintiff succeeded to the interest of the original corporation in the hotel building involved in this action.

2. The Act of Congress approved March 30, 1920, 41 Stat. 538, 548, provided:

"That the Secretary of War is hereby authorized to lease land on the United States Military Reservation at West Point, for a term of not exceeding fifty years, to any corporation, company, or individual, upon which to erect a hotel, and all other necessary buildings in connection therewith, in accordance with plans and specifications submitted to and recommended by the Superintendent of the Military Academy, and approved by the Secretary of War. Said lease shall contain such conditions, terms, reservations and covenants, as may be agreed upon and shall also provide for just compensation to the lessees for the construction of said hotel, appurtenances, and equipments, to be paid to said lessees at the termination of said lease."

3. October 17, 1924, the Secretary of War of the United States duly made, executed, and delivered to Herbert Williams of Newburgh, New York a lease of a certain tract of land within the boundaries of the United States Military Reservation at West Point, New York, for a term of fifty years, which reads in part:

"The said party of the second part [Williams] covenants that he will erect upon said premises a hotel and all other necessary buildings in connection therewith, substantially as set forth in the plans submitted by the party of the second part in connection with his bid to the Quartermaster of the Military Academy at West Point, complete plans and specifications to be hereafter submitted to, and approved in writing by, the Superintendent of the Military Academy at West Point and by the party of the first part.

* * * * * * *

"Provided further that said party of the second part shall keep the said hotel open for business every day during the continuance of this lease, except at such times as permission to close may be given in writing by the Superintendent, U. S. M. A.

* * * * * * *

"It is hereby agreed by and between the parties hereto that the

title to the building, or buildings, to be erected under the terms of this lease, and the appurtenances and equipments therein (except such furniture and furnishings as may be supplied by guests for their own use) shall at all times during the life of this lease be in the party of the second part, his representatives or assigns, but that when said lease shall come to an end, either by the expiration of the term reserved herein, or by reason of the voiding of the same by the party of the first part and the cancellation or annulment thereof by the Secretary of War herein provided, the title to said building, or buildings, and the appurtenances and
14 equipments shall pass at once to the United States, subject to the provisions herein contained for the payment by the United States of America to the party of the second part of just compensation therefor and the party of the first part shall have the right without notice or demand to enter and take possession of said building, or buildings, appurtenances and equipments without resort to any court proceedings, and to expel the party of the second part, his representatives and assigns.

"It is mutually understood, covenanted, and agreed that at the termination of this lease by the expiration of the term reserved, just compensation shall be made to the party of the second part, or his assigns, for the construction of said hotel appurtenances and equipments which may then be upon the demised premises.

"It is further agreed and understood that this lease may be annulled at any time by the Secretary of War should the party of the second part fail to observe all of the covenants and conditions of the lease or any of the rules and regulations promulgated by the Superintendent under said lease. But it is mutually understood and agreed that before the party of the first part may terminate this lease by reason of any failure or omission on the part of the party of the second part, or his assigns, due notice shall be given him as well as any mortgagee or trustee of any mortgage covering the building, appurtenances and equipment upon the demised premises, of the claim made by the party of the first part of such omission or failure, and a reasonable opportunity afforded him to comply with the requirement of the party of the first part in that regard. And if such failure or omission shall continue after the lapse of a reasonable time given by the Superintendent to correct the same and to comply with the requirement of the said superintendent in that regard, then the Secretary of War may in addition to other remedies the United States may have in the premises declare this lease forfeited for such failure, and thereupon just compensation shall be made to the party of the second part, or his assigns, for the construction of said hotel, appurtenances and equipments.

"That the party of the second part will keep said premises, the hotel, appurtenances and equipments in good repair at all times and that, at the expiration of said term or upon cancellation or annulment of the lease as herein provided, he will quit and
42 surrender said property in as good state and condition as reasonable wear and tear thereof will permit: that the Superintendent, U. S. M. A., or an officer designated by him, shall at any and all times have access to said premises to make such inspections as he may deem necessary."

Said lease, a true copy of which appears on pages 10–19 of the petition herein is hereby made part of these findings by reference.

4. March 24, 1925, Herbert Williams, duly executed and delivered to the original corporation an assignment of the lease.

5. Within the time required by the lease, the original corporation caused to be constructed and equipped, in accordance with the terms of the lease and the plans and specifications approved by the Superintendent of the Military Academy and by the Secretary of War, a hotel of fireproof construction, five and six stories high, containing approximately 225 guest rooms, three special suites, a lobby, a ballroom, a dining room, a grill room, a kitchen, and various services and facilities. The construction was commenced in April 1925, and completed in September 1926.

6. August 1, 1925, the original corporation made, executed, and delivered to the American Trust Company and Charles H. Trismen, as trustees, an indenture conveying to said trustees said lease and all the original corporation's right, title and interest therein, together with any building at any time placed on the land covered by the lease, personal property used therein, and all compensation to become due upon the termination of said lease, in trust as a first lien to secure payment of first mortgage and leasehold secured 6½ percent bonds in the aggregate principal amount of $1,000,000 issued by the original corporation. The proceeds of said bonds, less underwriters' fees and expenses, were used for the purpose of financing the construction of the hotel.

As of April 1, 1927, The Thayer-West Point Hotel Corporation entered into a second mortgage with the American Trust Co. as trustee, covering the same properties as were mortgaged under the first trust mortgage of August 1, 1925, in the principal amount of $500,000, subject to the first trust mortgage of August 1, 1925, and to the chattel mortgages referred to in Finding No. 15
43 herein, to secure an issue of General Mortgage & Leasehold Secured 7% Sinking Fund Gold bonds.

7. In June 1926, prior to completion, the original corporation took possession of the building and operated and managed the same under the terms of the lease.

8. The trustees mentioned in finding 6 commenced an action

in the Supreme Court of the State of New York, for the County of Orange, to foreclose the first mortgage described above and on or about January 17, 1929, a judgment was duly made, given and entered, decreeing the sale of the property described in the first mortgage. Said judgment, with a slight modification of the findings as to the amount of principal and interest due, was affirmed on appeal by the Appellate Division of the New York Supreme Court, Second Department, and became final.

9. On August 18, 1927, the original corporation was adjudicated a bankrupt in the United States District Court for the Southern District of New York. Due to the first lien and foreclosure proceedings, the property here involved was not administered by the trustee in bankruptcy, and no dividend was ever paid in the bankruptcy proceedings to any creditor of the original corporation, because of lack of available assets.

10. July 8, 1930, pursuant to said judgment, the lease and leasehold estate and all the properties and appurtenances and the interest therein, described in the first mortgage, except furniture and equipment covered by a chattel mortgage hereinafter set forth, were offered for sale at a public foreclosure sale and were bid in by a bondholders' committee, acting in behalf of certain of the holders of the first mortgage bonds. The price for which the property sold was $25,000, and subsequently a deficiency judgment of $1,235,067.67, was entered in the proceedings against the original corporation.

11. The purchase by the bondholders' committee was pursuant to a plan of reorganization, the principal features of which were: (1) the committee would organize a new corporation; (2) the committee would assign to the new corporation all the rights purchased by it at the foreclosure sale and all equipment which it might acquire by purchase or otherwise; (3) the new corporation would issue income bonds and would issue common stock,
44 the bondholders of the original corporation who would join in the plan would surrender their bonds and would receive $50 face value of the bonds of the new company for each $100 face value of surrendered bonds in the original corporation and would receive in addition shares of common stock in proportion to the amount of bonds surrendered; (4) the new company would mortgage the property for not to exceed $150,000 to procure working capital and to pay expenses of the reorganization, including the price paid by the committee at the foreclosure sale.

12. The reorganization was accomplished as planned. The plaintiff corporation was organized and to it the bondholders' committee assigned the interest acquired at the foreclosure sale. First mortgage bondholders of the original corporation surrendered bonds to the extent of $879,400 face value out of the

$1,000,000 issued. In exchange, such first mortgage bondholders received $439,700 face value of bonds issued by the plaintiff corporation and 8,794 shares of no-par value stock, constituting all the issued and outstanding shares of stock in the plaintiff corporation. Such bonds and common stock are presently outstanding.

December 27, 1930, plaintiff corporation made, executed, and delivered its bond for the sum of $125,000, secured by a first mortgage on the leasehold estate and other hotel property, which bond and mortgage are presently outstanding in the principal amount of $115,000, with unpaid interest at 6 percent per annum from January 1, 1942.

The holders of the $120,600 face value of the first mortgage bonds in the original corporation who did not join in the plan of reorganization received their proportionate distributive share of the proceeds of $25,000 paid at the foreclosure sale.

13. December 26, 1930, the referee appointed by the Court for the sale of the property under the decree of foreclosure above mentioned, duly made, executed, and delivered to plaintiff corporation his deed by which he granted and conveyed to plaintiff corporation the lease and leasehold estate here involved and all property covered by said sale. In the same month the trustee in bankruptcy of the original corporation, the trustees under the second mortgage on the property here involved and trustees of the
45 first mortgage made, executed, and delivered to plaintiff corporation their several deeds by which they remised, released and quit-claimed to the plaintiff corporation and interest which they might have in the property covered by said foreclosure sale.

14. December 22, 1930, the Superintendent of the United States Military Academy made, executed, and delivered to the plaintiff corporation his written approval of the assignment of the lease.

15. The furniture, furnishings, carpeting, rugs, linens, china, glassware, kitchen utensils and kitchen equipment in the hotel had been sold to the original corporation on or about May 21, 1926, by L. Barth & Company, Inc. The original corporation gave to the seller certain notes secured by chattel mortgages upon said personal property in part payment of the purchase price. The original corporation having defaulted in payment of the notes, the Barth company foreclosed the chattel mortgages, but left the furniture and other equipment in the possession of the receivers in the foreclosure proceedings first above-mentioned under an agreement by which the receivers paid a monthly rental to the Barth company. After the plaintiff took possession of the hotel, it continued the use of such furniture and other equipment under a rental agreement with the Barth company until February 19, 1931, when plaintiff purchased the furniture and other equipment from the Barth company.

16. Under and by virtue of the transactions hereinbefore described, plaintiff took possession of the hotel and all property here involved on January 1, 1931, and, until March 10, 1943, operated and managed the same under the terms of the lease here involved and with the knowledge and consent of the Superintendent of the United States Military Academy at West Point.

17. January 5, 1943, plaintiff sent a letter to the Secretary of War which reads in part:

"Due to existing conditions which are beyond the control of the stockholders and directors of The Thayer-West Point Hotel Company, and the military authorities at West Point, and which were not contemplated at the time the said lease was executed, it is now impossible to operate the Hotel as previously conducted. Such conditions will necessarily force a curtail-
46 tailment in operation unsatisfactory to the military authorities at West Point, and perhaps the closing of the Hotel in accordance with the terms of the lease. If the Hotel should fall into the hands of outside interests through the foreclosure of the first mortgage thereon, the bondholders would be deprived of any return on their original investment and the operation of the Hotel would be conducted to the detriment of the Officers, the Cadets and their friends. Under the circumstances the Hotel Company considers it desirable that in order to avoid a curtailment of the operation or a possible closing down of the hotel, or the operation of the hotel to the detriment of the Officers, the Cadets and others, the properties should be owned and operated by the Government.

"The lease provides that it may be cancelled at any time by the Secretary of War should the second party thereto fail to observe all the covenants and conditions of the lease or any of the rules and regulations promulgated by the Superintendent under the said lease, and that the Secretary of War may declare the lease forfeited for such failure and thereupon just compensation shall be made to the second party of said lease or his assigns for the construction of the said Hotel, appurtenances and equipment.

"Inasmuch as our holdings and the value thereof depend upon a contract, authorized by and embodied in the lease, it is suggested that the method of cancellation provided for in the lease, if adopted, will protect all parties, and we therefore suggest the following precedure, under the lease, which will result in the acquisition by the Government of the properties in question:

"In order that the officers and directors of The Thayer-West Point Hotel Company may fully protect the rights of its stockholders and its bondholders, we are writing to you to inquire if you will write us a letter, stating that in the event default is made by the Company under the provisions of the lease, you will forthwith thereafter declare the lease forfeited and take title to the

building erected on the leased property and the appurtenances and equipments therein (except such furniture and furnishings as are supplied by guests for their own use) in accordance with the provisions of the lease to the end that the Company shall be entitled to the just compensation, as provided in the lease. The letter should also indicate that the forfeiture will not result in any action by the Government other than to effect the conveyance of the Hotel property to the Government and to make just compensation therefor, as provided in the lease.

47 "This action is to be based upon our delivery to the Superintendent at West Point of notice of the default in advance of the time when it will occur, and also upon our delivery to the Superintendent of a waiver by this Company and by the present holder of the mortgage on the hotel of notice of any claim made by you of omission or failure out of such default, and a waiver of reasonable opportunity of compliance by the mortgagee to correct such omission or failure of the terms of the lease, and of a further waiver of any time to be given by the Superintendent of the West Point Academy to correct the omissions or failure caused by such default and to comply with any requirements of the Superintendent in that regard.

"This communication is not intended and should not be construed as a notice of default on our part. However, it is urgently requested that, with a view to relieving the acute situation which exists with respect to the maintenance and operation of the hotel, consideration be given to the possibility of Government ownership as contemplated by the terms and provisions of the lease.

"Your early advice in this matter will be appreciated."

48. February 5, 1943, the Secretary of War sent a letter to plaintiff, which reads in part:

"Your letter indicates the necessity for a curtailment of the operation of the hotel by your Company or a possible closing of the hotel. In case of the closing of the hotel, it would be incumbent upon the Government to notify the lessee and other interested parties that such action constitutes a failure to observe the covenants and conditions of the lease and would be a sufficient cause for annulment of the lease. Such notice would of necessity give reasonable opportunity to the parties to comply with the terms and conditions of the lease before an annulment would be effective. If, however, the Hotel Company should notify the War Department that it intended to close the hotel on a given date, and accompanied such notice with waivers from the Company, the mortgagee, trustee of any mortgage and other interested parties, relieving the lessor of the obligation of giving notice and granting a reasonable time for compliance with the terms and conditions of the lease, then it would be the duty of the War Department to take possession of the property upon the date specified.

"The statute (41 Stat. 548) provides that upon termina-
48 tion of the lease just compensation must be paid to the owners of the property and it will be necessary for the Government to comply with the statute.

"Please be informed, therefore, that if you proceed as you have tentatively outlined in your letter, and forward a notice of default accompanied by proper waivers from all interested parties, it is the intention of the War Department to take the necessary action to declare the lease forfeited under its terms, to take possession of the building and appurtenances, and to institute condemnation proceedings for the purpose of clearing the title to the buildings, appurtenances and equipment, and of determining the just compensation to be paid to the owners in accordance with the statute.

19. February 26, 1943, plaintiff sent identical notices to the Secretary of War and to the Superintendent of the United States Military Academy at West Point which read:

"Please take notice that the undersigned intends to close The Thayer-West Point Hotel, located on the Military Reservation at West Point, New York, on March 10, 1943, at 9 o'clock, A. M., E. W. T. Reference is made to letters from the undersigned to the Secretary of War, dated January 5, 1943, and from the Secretary of War to the undersigned dated February 5, 1943."

March 10, 1943, pursuant to the arrangement as provided in the letters mentioned in Findings 17 and 18, the plaintiff discontinued operation of the said hotel and its properties, appurtenances and equipment, and closed the said hotel at 9 o'clock A. M. Eastern War Time on said day and immediately thereupon the Secretary of War for and in behalf of the defendant, acting through his agents and representatives, and pursuant to the provisions of the lease, took over possession and occupation and management of the said hotel and all its properties, appurtenances, and equipment, and has ever since continued in possession, management, operation, and control of the same.

20. March 24, 1943, the Secretary of War caused to be served on the plaintiff a written notice which recited facts and circumstances leading to the making of the lease and the plaintiff's interest therein and stated in part:

"Whereas, under said lease it is provided that the lessee 'shall keep the said hotel open for business every day during the
49 continuance of this lease, except at such times as permission to close may be given in writing by the Superintendent, U. S. M. A. * * *' and

"Whereas, the said lease provides that it may be annulled at any time by the Secretary of War should the lessee fail to observe all of the covenants and conditions set forth therein; that prior to such termination by annulment of the said lease by reason of

such failure or omission on the part of said lessee, due notice shall be given to said lessee and to any mortgagee or trustee of any mortgage covering the buildings, appurtenances, and equipment in or upon the said premises, the said lessee shall be given a reasonable opportunity to correct any failure or supply any omission in the matter of compliance with the covenants and conditions of said lease, and

"Whereas, the Thayer-West Point Hotel Company, a Delaware corporation, lessee, ceased operation of the hotel on March 10, 1943, at 9:00 a. m. E. W. T., and

"Whereas, the lessee and the mortgagee have by instruments dated February 26, 1943, waived the notice of failures or omissions and the reasonable opportunity for compliance.

"Now, therefore, I, Henry L. Stimson, Secretary of War of the United States of America, acting by and on behalf of the United States, as authorized by law and in accordance with the terms and conditions of the aforesaid lease, do hereby annul said lease effective upon date of delivery of this instrument."

21. April 19, 1943, plaintiff sent a letter to the Secretary of War calling attention to the terms of the lease and stating that plaintiff had become entitled to just compensation for the construction costs of the hotel, appurtenances, and equipment. Plaintiff requested an opportunity to discuss the amount and added: "for the purposes of discussion only, we fix the tentative amount of our claim to be approximately $2,300,000.00."

May 21 defendant replied to this letter in part as follows:

"It appears to this office that the tentative amount of $2,300,000, fixed by you for settlement, is far in excess of the reasonable value, and therefore it appears necessary to have the just compensation determined by the court.

22. May 20, 1943, the day after the petition in the case at bar was filed, defendant filed a petition in the District Court
50 of the United States in and for the Southern District of New York for the condemnation of the property here involved. February 7, 1944, an order was made in said action staying all further proceedings therein, pending the final determination of this case in the Court of Claims.

23. The fair and reasonable cost to the original corporation of constructing the hotel building and appurtenances was approximately $1,300,000.00. The books of original entry covering the cost were destroyed on or about February 25, 1938, by the attorneys for the trustee in bankruptcy.

24. The original corporation purchased most of the original furniture and equipment for the hotel from L. Barth & Company, Inc., at the contact price of $296,743.03, and paid $35,000 at the time of the purchase. It gave notes secured by chattel mortgages

for the remainder and paid $17,000 on the deferred balance, making a total of $52,000 paid by the original corporation on the purchase price. In 1930, L. Barth & Company, Inc., foreclosed the chattel mortgages, but left the furniture and equipment in the possession of the original corporation, under an agreement by which the original corporation paid rental to L. Barth & Company, Inc., for the use of the furniture and equipment. After plaintiff acquired the hotel, it took possession of the furniture and equipment under a similar agreement, and paid rental to L. Barth & Company, Inc., for its use until February 19, 1931, when plaintiff purchased the furniture and equipment from L. Barth & Company, Inc., and paid them the sum of $35,000 therefor.

25. As of March 10, 1943, there was no market for the hotel and no market value thereof can be determined. The cost of reproducing the building as of that date would have been $1,138,160, not including the cost of landscaping, or any allowance for interest during construction or charges for financing.

26. The effect of war conditions on the market for furniture and equipment of the character here involved makes it difficult to fix a value as of March 10, 1943. New furniture and equipment of the same kind and character would have cost, as of March 10, 1943, from 10 percent to 20 percent more than the furniture and equipment cost in 1926, when most of it was purchased, that
51 is, the cost in 1943 would have been from $325,000 to $355,000. The furniture and equipment was almost seventeen years old in 1943 and in hotel practice, such furniture and equipment is considered to depreciate 100 percent in four to twelve years. It was worn, some of it was in need of repairs and repainting, and a portion of it was not usable at all. It was not, however, depreciated 100 percent in fact, and it was not useless, except in particular instances. On the contrary, prior to March 10, 1943, most of it was being used daily by plaintiff in the business of the hotel, and was continued to be used by the defendant after that date. Defendant expended for repairs and replacements an amount equal to approximately eight percent of the amount new equipment of the same kind and character would have cost at that time. After such repairs and replacements, the furniture and equipment was maintained and used by the defendant for the business of the hotel and the accommodation of its guests, who were composed principally of the personnel at the Military Academy, their relatives and friends, and other persons whose presence was occasioned by matters connected with the Military Academy.

27. Taking into consideration all relevant facts and circumstances, including the approximate cost of original construction, the cost of reproduction as of March 10, 1943, less depreciation, the fair and reasonable value of the hotel and appurtenances as

of March 10, 1943, the date possession of it was taken by the defendant, was $820,682.00.

Taking into consideration all relevant facts and circumstances, including items of original cost with depreciation, physical condition and the market for second-hand furniture on March 10, 1943, and usefulness, the fair and reasonable value of the equipment, including furniture and kitchen equipment, on March 10, 1943, was $47,000.00.

The total of these two values is $867,682.00, and this is fair and reasonable compensation to the plaintiff as of March 10, 1943, for construction of the hotel, appurtenances, and equipments. The addition thereto of four percent per annum thereon from March 10, 1943, until the date of payment, raises the aggregate value of $867,682.00, so ascertained and determined, to just compensation as of the date of payment.

52 *Conclusion of law*

Upon the foregoing special findings of fact, which are made a part of the judgment herein, the court decides, as a matter of law, that the plaintiff is entitled to recover $867,682.00 with interest.

It is therefore adjudged and ordered that the plaintiff recover of and from the United States the sum of eight hundred sixty-seven thousand six hundred and eighty-two dollars ($867,682.00), with interest at four percent per annum from March 10, 1943, to the date of payment, not as interest but as a part of just compensation.

Opinion

WHALEY, Chief Justice, delivered the opinion of the court:

Plaintiff, The Thayer-West Point Hotel Company, brings this suit against the defendant under the provision in a lease for just compensation to the lessee, or its assigns, for the construction of a hotel, its appurtenances and equipments, on the United States Military Reservation at West Point, State of New York.

The lease was entered into pursuant to an Act of Congress approved March 30, 1920, 41 Stat. 538, 548, reading as follows:

"That the Secretary of War is hereby authorized to lease land on the United States Military Reservation at West Point for a term of not exceeding fifty years, to any corporation, company, or individual, upon which to erect a hotel, and all other necessary buildings in connection therewith, in accordance with plans and specifications submitted to and recommended by the Superintendent of the Military Academy, and approved by the Secretary of War. Said lease shall contain such conditions, terms, reservations

and covenants, as may be agreed upon and shall also provide for just compensation to the lessees for the construction of said hotel, appurtenances, and equipments, to be paid to said lessees at the termination of said lease."

The plaintiff lays claim to "the total cost for the construction of the hotel, including appurtenances and equipment, together with all expenses properly attributable thereto," in the sum of approximately $1,932,000.00.

53 Pursuant to the Act of March 30, 1920, the Secretary of War leased to Herbert Williams October 17, 1924 a tract of land within the military reservation, consonant with the expressed purpose of the Act. Certain provisions of this lease have a more or less direct bearing upon the claim here made by the plaintiff.

The lessee covenanted to build upon the reservation a hotel substantially in accordance with Government plans, and to keep it open continuously except at specially permitted times, title to the hotel to be in the lessee until termination of the lease when it should pass forthwith to the Government. Upon failure of the lessee to observe the covenants of the lease, the Secretary of War might annul the lease, and, as the lease worded it,

"thereupon just compensation shall be made to the party of the second part [lessee], or his assigns, for the construction of said hotel, appurtenances and equipments."

The lessee was not given free rein as to return on his investment. The lease provided that the lessee

"shall, from time to time, establish standard rates for rooms and meals in said hotel, which rates shall be subject to the approval of the Superintendent of the Military Academy for the time being, and the following persons shall be entitled to a discount from said rates of twenty-five percent (25%) upon production of a card signed by the Adjutant of the Post or such other officer as may be designated by the Superintendent representing the bearer to be entitled thereto as follows;

"(a) The Board of Visitors to the United States Military Academy and officers of the United States Government making tours of inspection at the Post.

"(b) Parents and guardians of cadets.

"(c) Officers of the United States Army on duty at the Post and their dependents when other quarters are not available.

"(d) Officers and their dependents not under War Department orders for such duty, but officially connected with athletic teams as coaches or trainers. There shall be no discrimination in the quality of service, meals or otherwise, against these classes as compared with other guests.

"The total number of rooms in said hotel which shall be subject to such discount shall not at any one time exceed one hundred rooms.

54 As finally constructed, the hotel had approximately 225 guest rooms.

The lessee, being the party of the second part, further covenanted as follows:

"That the party of the second part will keep said premises, the hotel, appurtenances and equipments in good repair at all times and that, at the expiration of said term or upon cancellation or annulment of the lease as herein provided, he will quit and surrender said property in as good state and condition as reasonable wear and tear thereof will permit; * * *."

Herbert Williams, being permitted to do so by the terms of the lease, formed a corporation, The Thayer-West Point Hotel Corporation, and on March 24, 1925, assigned the lease thereto. This corporation constructed the hotel.

The corporation issued first mortgage bonds in the principal sum of $1,000,000 secured by a trust deed to the American Trust Company and Charles H. Trismen, as trustees, conveying the lease and prospective building in trust. Proceeds of the bond issue were used to finance construction of the hotel. A second trust mortgage was entered into by the corporation on or about April 1, 1927, with the American Trust Company, covering the same properties, in the principal amount of $500,000.00.

The corporation operated the hotel for a time but in August of 1927 went into bankruptcy. The property, however, was not administered by the trustee in bankruptcy due to foreclosure proceedings instituted by the trustees, American Trust Company and Charles H. Trismen, wherein judgment was rendered and a sale decreed.

A committee was formed, representing certain of the bondholders, which bid in the property at the foreclosure sale, at $25,000, and a deficiency judgment was entered against the defaulting corporation in the sum of $1,235,067.67.

The bondholders' committee formed a new corporation, The Thayer-West Point Hotel Company, the plaintiff herein, according to a plan by which the committee assigned to the plaintiff its purchased rights and equipment, and the plaintiff issued income bonds and common stock. The bondholders of the original corporation,

participating in the plan, exchanged their bonds at $100

55 face value of surrendered bonds to $50 face value of the new bonds, receiving in addition shares of common stock in proportion to the amount of bonds surrendered.

The holders of the first mortgage bonds of the original corporation who did not join in the plan of reorganization, holding $120,-

000 face value, received their proportionate distributive share of the proceeds of the $25,000 paid at the foreclosure sale.

Out of the original bond issue of $1,000,000 by the old corporation, bonds to the extent of $879,400 face value were surrendered in return for $439,700 face value of the new bonds and 8,794 shares of no-par-value common stock.

These new bonds and the common stock are now outstanding.

In addition the plaintiff on December 27, 1930, issued its bond in the sum of $125,000, secured by first mortgage on the hotel property and leasehold, which is now outstanding in the principal amount of $115,000 with unpaid interest at six percent per annum from January 1, 1942.

In December of 1930, the referee in the foreclosure proceedings, the trustee in bankruptcy, the trustees of the first mortgage and of the second mortgage of the original corporation conveyed to the plaintiff all their several interests in the hotel and leasehold, and the Superintendent of the Academy gave his written approval of assignment of the lease to plaintiff.

This was the situation with respect to ownership of the hotel at the end of 1930. The original corporation had outfitted the hotel at some expense about May 21, 1926, giving to the vendor of the furniture and equipment notes secured by chattel mortgage. The original corporation defaulted on the notes, the chattel mortgage was foreclosed, but the mortgagee left the furniture and equipment in the hotel under a rental agreement. This rental agreement was continued with the plaintiff when the plaintiff took possession at the beginning of 1931, but the plaintiff purchased the furniture and equipment outright February 19, 1931.

Beginning January 1, 1931, and ending March 10, 1943, the plaintiff operated the hotel under the terms of the lease.

Correspondence, beginning January 5, 1943, and ending
56 May 21, 1943, is described in the findings. It appears thereby that the plaintiff ceased operation of the hotel March 10, 1943, that the defendant annulled the lease and took over the property, certain stipulations as to notice, etc., being waived.

Suit is now here to recover compensation for the construction of the hotel, its appurtenances and equipment.

The lease provided that, under the circumstances here described, "just compensation shall [thereupon] be made to the party of the second part [lessee], or his assigns, for the construction of said hotel, appurtenances and equipments."

This lease was entered into October 17, 1924; the hotel was completed in September 1926.

The statute under which the lease was made provided that just compensation should be paid at the termination of the lease.

The original construction costs were not made a matter of record between the parties, as one might suppose would have been done if original cost was to be the basis of just compensation. The original books of entry, showing construction costs have been destroyed. The original corporation came into existence solely for the purpose of carrying into effect the terms of the lease; its whole existence was bound up in the lease. It appears to have had no other business than that contemplated by the lease. The lease was its lifeblood.

The testimony is to the effect that the books of account were destroyed by the attorneys for the trustee in bankruptcy, who, curiously enough, did not, because the foreclosure proceedings, administer the property at all. The books were destroyed February 25, 1938, while the plaintiff was operating the hotel. The excuse is that the rules of the bankruptcy court permitted such destruction, but that is not saying it had to be done.

The evidence surviving as to actual original costs is in general too fragmentary, indefinite, and otherwise unreliable to warrant definite findings with regard thereto. The amounts found are therefore approximate only.

57 There are other sources which may be made use of in fixing upon just compensation. "Just compensation" has definition that relates it to a taking. Here there was no taking in the legal sense. The contract provided that title and possession should pass from lessee to lessor immediately upon termination of the lease. Title did pass, and an agreed entry was made. The plaintiff ceased operation March 10, 1943. Although there was no "taking," the parties use this date for the purpose of offering values other than those at time of original construction of the hotel, and we use it as the date of the "taking" for fixing "just compensation."

There was no market to which resort might be had for adjudging value of the hotel building. The plaintiff owned the building, the Government owned the land on which the building rested, and the building formed part of the realty. Assuming that market value could be determined for the realty (it was a Government military reservation), there would be the problem of dividing such value between building and land.

The Act of Congress says that the lease shall provide for just compensation, to be paid at termination. The amount of just compensation was not fixed by the lease. Instead, the lease simply provided, without following the wording of the statute, that just compensation should be made and left the amount to be determined at a future time.

But neither in the Act nor in the lease is there any provision for just compensation for a taking. The compensation is to be for construction of the hotel. Cost is not mentioned.

There was perhaps good reason for not specifying the amount of just compensation in the original lease. The cost of construction had not been determined, if cost were to be a fact or in arriving at just compensation. And if the original cost were to be recovered upon termination, there would be no need for the lessee, in fixing upon the charges to its guests, to provide for return of the original investment in addition to earnings on investment. Assurance that it would get back the original investment would take care of the question of retirement. Whether this situation,
58 or some other situation, was considered by the Government in approving hotel rates, is a matter left in complete darkness. The fact that the lessee was paying no ground rent might also have influenced hotel rates.

Under these circumstances it seems apparent that just compensation was not to be necessarily original cost, and, as indicated, there appears to have been at no time an account stated between the parties covering original cost.

Just compensation therefore for the construction of this hotel is not subject to any nice calculation.

What amount constituted just compensation to the plaintiff March 10, 1943, for construction of the hotel and appurtenances? We have found it to be $820,682.00. In arriving at this amount there has been taken into consideration the history and circumstances recited in the findings of fact. The main reliance has been upon sound value, that is, reconstruction new less depreciation, bringing the hotel building and appurtenances to the condition they were in when transferred to Government title and possession March 10, 1943. This takes care of depreciation in excess of that due to reasonable wear and tear.

There was a market for the hotel equipment. The application of so-called "sound" value to the equipment need not be resorted to. On the basis of all the facts relevant thereto, recited in the findings, just compensation for the equipment as of March 10, 1943, is found to be $47,000.00.

The total of just compensation to the plaintiff for construction of the hotel, its appurtenances, and equipments, is therefore $867,682.00, as of March 10, 1943.

There remains the question of additional allowance to make compensation a just one as of the date of payment.

The suit here is on a contract and not for compensation under the Fifth Amendment. Section 177 of the Judicial Code prohibits this Court from allowing interest "unless upon a contract expressly stipulating for the payment of interest." But the Supreme Court has held that interest, so-called, necessary to build compensation up to a point where it can be con-
59 sidered just as of the date of payment, is not interest within

the meaning of Section 177 of the Judicial Code. Phelps v. United States, 274 U. S. 341, 344.

Both statute and contract expressly provide for the payment of "just compensation." The compensation payable must be no less just than that payable under the Fifth Amendment. There is no plausible distinction.

The rate of four percent per annum from March 10, 1943, down to the date of payment, will be applied to and added to the sum of $867,682.00 and included in the judgment herein.

The plaintiff is entitled to recover accordingly, and it is so ordered.

JONES, Judge; and LITTLETON, Judge, concur.

WHITAKER, Judge, dissenting:

I dissent. I think $500,000.00 would be liberal compensation.

MADDEN, Judge, took no part in the decision of this case.

61 *Judgment*

At a Court of Claims held in the City of Washington on the 4th day of March A. D., 1946, judgment was ordered to be entered as follows:

Upon the special findings of fact, which are made a part of the judgment herein, the court decides, as a matter of law, that the plaintiff is entitled to recover $867,682.00 with interest.

It is therefore adjudged and ordered that the plaintiff recover of and from the United States the sum of eight hundred sixty-seven thousand six hundred and eighty-two dollars ($867,682.00) with interest at four percent per annum from March 10, 1943, to the date of payment, not as interest but as a part of just compensation.

63 [Clerk's certificate to foregoing transcript omitted in printing.]

(Endorsement on cover:) File No. 50935. Court of Claims. Term No. 1232. The United States, Petitioner, v. The Thayer-West Point Hotel Company. Petition for a writ of certiorari and exhibit thereto. Filed May 15, 1946. Term No. 1232 O. T., 1945.

U. S. GOVERNMENT PRINTING OFFICE: 1946

Supreme Court of the United States

Order allowing certiorari

Filed October 14, 1946

The petition herein for a writ of certiorari to the Court of Claims is granted and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE: 1946